

MINUTE ENTRY
DUVAL, J.
December 12, 2003

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA

CIVIL ACTION

VERSUS

NO. 94.1867

RICHARD A. SHERLOCK, ET AL.

SECTION "K"(5)

Before the Court is a Motion to Compel Compliance with Subpoenas
al Issue, and Motion for Rule 60(b) Reconsideration of the Court's Order of
December 16, 2003 and Motion For Stay of Proceedings Pending
Disposition of the Motions Before this Court and Richard A. Sherlock's
Response to the Harsh Rhetoric of This Court in its Order of 16 Dec 03.
Having reviewed the motion, the Court finds it again without basis in law.
Accordingly,

IT IS ORDERED that the Motion to Compel Compliance with
Subpoenas-at Issue, and Motion for Rule 60(b).Reconsideration of the
Court's Order of December 16, 2003 and Motion for Stay of Proceedings
Pending Disposition of the Motions-Before this Court and Richard A
Sherlock's Response to the Harsh Rhetoric of This Court in its Order or 16
Dec 03is **DENIED**.

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U.S. DISTRICT COURT
EASTERN DISTRICT OF LA

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NO. 94-1867

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SECTION "K"(5)

Before the Court is "Richard A. Sherlock's Rule 60b (sic) Motion to Vacate and/or Modify Judgment and Motion for Reconsideration of the Plaintiffs Motion for Entry of Orders of Sale and Motion to Stay Order of Sale." Having reviewed the pleadings, memoranda and the relevant law, the Court finds no merit in the motion.

A final judgment was rendered in this tax matter brought by the United States on September 26, 1996. The Court found, inter alia, that Richard A. Sherlock was liable for federal income taxes in the amount of

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436,061.81, plus statutory additions. In addition, the judgment in favor of the United States foreclosed federal tax liens that encumbered the real property of the defendant Richard A. Sherlock located at 6409 Gillen Street, Metairie, Louisiana and on a lease to a fishing camp located on Lake Catherine. *United States v. Sherlock*, 1996 WL 551474 (E.D. La. September 26, 1996). The judgment was affirmed by the United States Court of Appeals on December 18, 1997, *United States v. Sherlock*, 134 F.3d 369 (5th Cir. 1997). Certiorari was denied by the Supreme Court of the United States on October 19, 1998. *Sherlock v. United States*, 525 U.S. 949 (1998).

Pursuant to that judgment, on August 22, 2003, the United States moved for and on August 29, 2003, the Court ordered the sale of these interests. On September 22, 2003, the instant motion was filed by Sherlock. In this motion, Sherlock claims that (1) the Order of Sale violated the post discharge injunction pursuant to 11 U.S.C. § 524; (2) that the Internal Revenue Service liens were without jurisdictional foundation and that the Internal Revenue Service lacks jurisdiction and standing to maintain an action in collection against Sherlock; and (3) that the United States Department of Justice attorney lacks standing to make such a the motion. This motion is devoid of any basis in law or logic and verges on a sanctionable action by Sherlock.

Sherlock's argument that tax liens are discharged in bankruptcy is blatantly unfounded. Because Sherlock failed to file federal income tax returns for the years 1975 through 1984, those liabilities are excepted from any discharge under 11 U.S.C. §523(a)(1)(B)(I). In addition, discharge does not apply to any tax debts that a debtor willfully attempts to evade defeat. 11 U.S.C. §523(a)(1)(C). Considering the finding of this Court that the transfer of these properties was done to hinder, delay or defraud the United States in its attempt to collect his unpaid income tax liabilities, any general discharge that was granted to the defendant in his bankruptcy proceeding does not affect the personal judgment entered against him in this civil action and does not invalidate the orders of sale that this Court has enter. In addition, to the extent that such personal liability might have been discharged, the tax liens against these properties survive. 11 U.S.C. § 524(a)(1),(2). "Ordinarily, liens and other secured interest survive bankruptcy." *Internal Revenue Service v. Orr (In re Orr)*, 180 F.3d 656, 660 (5th Cir.1999) (citations omitted). Thus, the sale of the property against which valid tax liens had attached is not precluded and indeed is valid.

As to the rest of plaintiffs' claims concerning the authority of the Internal Revenue Service to enforce the internal revenue laws, the authority of the Assistant United States Attorney to bring this suit and to the extent that there is an implication that this Court is without authority to rule on

such motions, such allegations are frivolous and as stated by the United States Court of Appeals in *Crain v. Commissioner of Internal Revenue*, 737 F.2d 1417, 1417-18 (5 th Cir. 1984):

We perceive no need to refute these arguments with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit. The constitutionality of our income tax system-including the role played within that system by the Internal Revenue Service and the Tax Court-has long been established.

Id. Arguments based on rank speculation about taking of oaths is ludicrous and will not be given truck.

Mr. Sherlock has led the United States government on a merry chase for more than ten years with regards to income taxes for the years 1975 through 1984. It is time for frivolous appeals and blatant evasion to end. Accordingly,

IT IS ORDERED that Richard A. Sherlock's Rule 60b (sic) Motion to Vacate and/or Modify Judgment and Motion for Reconsideration of the Plaintiffs Motion for Entry of Orders of Sale and Motion to Stay Order of Sale is **DENIED**.

